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09/967,277	10/01/2001	Robert Rasmussen	7578	6795

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EXAMINER

STORMER, RUSSELL D

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/967,277

Applicant(s)

RASMUSSEN, ROBERT

Examiner

Russell D. Stormer

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 26-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33,35 and 45-50 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-14,16,18-24,26-32,34,36-39,41-44,51 and 53 is/are rejected.
- 7) ☒ Claim(s) 3,5,15,17 and 40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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### ***Response to Amendment***

1. The indicated allowability of claims 6-13, 19-23, 26, 32, 34, and 36-38 in the prior office action is withdrawn in view of the newly discovered references.

It is noted that claim 26 was considered to be withdrawn from consideration as being drawn to a non-elected embodiment, but was then indicated allowable in the previous office action. To clear up any confusion, claim 26 will be examined in this office action.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

There is no description of the second wing being sheared from the pad and then being bent and then being attached to the pad separately from the first wing as set forth in claim 12. The specification is not enabling for this claimed feature.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not

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described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claim is rejected because it contains subject matter which is not enabled as noted in paragraph 2 above.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 10, 31, 32, 38, 41, 44, 51, and 52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of claims 10, 38, 41, 44, 51, and 53, the terms “preferably” and “some” are objected to as indefinite. The term “preferably” sets forth an indefinite range of measurements for the dimensions of the shoe, and should be deleted. The term “some” also sets forth an indefinite range of the angles or the hardness of the bar. This term is normally used informally and has no place in claim language.

Claim 31 sets forth that the pad and bar are formed as a single piece, but depends from claim 28 which limits the pad and the bar to being formed separately and then joined. Claim 32 claims the pad and the bar as being formed separately and then joined, *and also claims* the pad and bar as being formed as a single piece. Obviously these claims set forth a method which is impossible to perform, and the claims are therefore indefinite as to their metes and bounds. Claims 31 and 32 are so indefinite that they cannot be examined on the merits.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 4, 14, 16, 22, 24, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Ratkowski (newly cited).

Ratkowski discloses a grouser shoe for a tracked vehicle comprising a pad 11 and a bar 20. The bar includes a straight center portion 20M and bent wing portions 20A and 20B. With respect to claim 22, the method of forming and attaching the bar to the pad is given no patentable weight in the product claim.

9. Claim 26 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Weller.

The pad of Weller (newly cited) includes a wear bar 15 at the leading edge of the pad. See figures 1 and 5.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 6, 7, 11, 13, 18, 19, 23, 28, 29, 30, 34, 36, 39, 51, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratkowski in view of Gotshall (newly applied).

Ratkowski is applied as in paragraph 8 above, but the bar is not attached to the pad.

Gotshall teaches a track pad assembly in which the bar 2 is welded to the pad 1. From this teaching it would have been obvious to form the bar 20 of Ratkowski separately from the pad and then attach the bar to the pad by welding. This would simplify the process of forming the bar and the pad, since each would be of a shape that is easier to form than a pad having a bar integrally formed therewith.

The method limitations in claim 11 are afforded no patentable weight in the product claim.

With respect to claim 36, welding the bar to the pad would inherently change some of the physically properties of the bar.

12. Claims 8, 9, 10, 37, 38, 43, 44, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratkowski in view of Gotshall and Reigel et al.

Ratkowski and Gotshall are applied as set forth in paragraphs 8 and 10 above. The bar is not hardened.

Riegel teaches a method of selectively hardening portions of a track pad to increase wear resistance. The bar 12 hardened such that it is similar to the hardness of

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the pad where the two are connected, but harder in areas further from the joint. From this teaching it would have been obvious to harden the bar of Ratkowski or portions thereof to increase the wear resistance of the bar.

The hardness to which the bar is hardened to is considered to be an obvious mechanical expedient and therefore the specific hardness would have been easily determined by those of ordinary skill in the art based on the intended use of the track, the size of the vehicle, etc.

The angle of the bent portions of the bars to the straight portion is not shown to be 10-20 degrees, but the angle would have been an obvious mechanical expedient based on the intended use of the track, the size of the vehicle, the terrain in which the vehicle is intended to operate, etc.

13. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratkowski in view of Reigel et al.

Ratkowski and Reigel et al are applied and combined as set forth in paragraphs 8 and 11 above.

### ***Allowable Subject Matter***

14. Claims 3, 5, 15, 17, and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claims 33, 35, and 45-50 are allowable over the prior art of record.

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16. Claim 52 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in this Office action.

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references show other track shoe assemblies.

18. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (703) 308-3768. The examiner can normally be reached on Monday through Friday, 9 AM to 4 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

3/17/04

  
**RUSSELL D. STORMER**  
**PRIMARY EXAMINER** 3/17/04